



## California Workers' Compensation Institute

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April 7, 2021

VIA E-MAIL – [DWCForums@dir.ca.gov](mailto:DWCForums@dir.ca.gov)

Maureen Gray, Regulations Coordinator  
Division of Workers' Compensation  
P.O. Box 420603  
San Francisco, CA 94142  
Attn: DWC forums

### **Re: Proposed Disability Evaluation Unit (DEU) Regulations**

Dear Ms. Gray:

These comments on the proposed Disability Evaluation Unit (DEU) regulations are presented on behalf of members of the California Workers' Compensation Institute (the Institute). Institute members include insurers writing 80% of California's workers' compensation premium, and self-insured employers with \$87B of annual payroll (33.6% of the state's total annual self-insured payroll).

Insurer members of the Institute include AIG, Allianz Global Corporate and Specialty, AmTrust North America, AXA XL Insurance, Berkshire Hathaway, CHUBB, CNA, CompWest Insurance Company, CopperPoint Insurance Companies, Crum & Forster, EMPLOYERS, Everest National Insurance Company, GUARD Insurance Companies, The Hanover Insurance Company, The Hartford, ICW Group, Liberty Mutual Insurance, North American Casualty Company, Preferred Employers Insurance, Republic Indemnity Company of America, Sentry Insurance, State Compensation Insurance Fund, Travelers, WCF National Insurance, Zenith Insurance, and Zürich North America.

Self-insured employer members include Albertsons/Safeway, BETA Healthcare Group, California Joint Powers Insurance Authority, California State University Risk Management Authority, Chevron Corporation, City and County of San Francisco, City of Los Angeles, City of Pasadena, City of Torrance, Contra Costa County Risk Management, Costco Wholesale, County of Los Angeles, County of San Bernardino Risk Management, County of Santa Clara Risk Management, Dignity Health, Disneyland Resort, East Bay Municipal Utility District, Foster Farms, Grimmway Farms, Kaiser Permanente, Marriott International, Inc., North Bay Schools Insurance Authority, Pacific Gas & Electric Company, Schools Insurance Authority, San Diego Gas and Electric, Shasta County Risk Management, Shasta-Trinity Schools Insurance Group, Southern California Edison, Southern California Gas, Special District Risk Management Authority, Sutter Health, and the University of California.

Recommended revisions to the proposed regulations are indicated by **underscore** and **strikeout**. Comments and discussion by the Institute are identified by *italicized text*.

## Recommended Division Considerations:

- The proposal includes substitutions of the word “shall” with the words “must” or “will.” The use of the words “shall” and “may” has long been part of the statutory workers’ compensation nomenclature and understood as being directive or permissive, respectively. It is not clear what the Division intends in its replacement of these words, often in conflict with statutory enabling sections, in the absence of some definition or clarification of their intended meaning.
- The proposed Disability Evaluation Unit (DEU) regulations contain three renumbered sections (*i.e.*, §10145, §10146, and §10147) that have largely become obsolete, and consideration should be given to striking them altogether. These sections were intended to implement §4660(d) (also obsolete but not yet revised by legislative enactment), which was enacted when the revision to the *Schedule for Rating Permanent Disabilities* (PDRS) took effect in 2005 and accounted for a transition period to the new rating schedule as affecting injury dates prior to January 1, 2005. As such, we ask that the Division consider the obsolete nature of these sections as it moves forward with these revisions and updates.
- CWCI understands the Division’s need to group all related regulations in the proposal by renumbering them in sequential order. However, renumbering §9725 through §9727 into §10145 through §10147, creates a conflict with existing regulation §11.5(i)(3), which has not been modified. The latter section makes specific reference to the DEU sections prior to their renumbering.

CWCI is aware that the Division is updating the QME regulations as these proposed DEU regulations are proceeding through the public comment process. We anticipate that changes in these regulations will be done in concert, to avoid potential conflict. In the meantime, CWCI wishes to provide assistance in the drafting of the proposed regulations, as outlined below.

## Recommendation:

### **§10158. Time Period for Issuing a Summary Rating Determination Pursuant to Labor Code §4061(e).**

Following the receipt of a comprehensive medical-legal evaluation of **unrepresented employees** from a Qualified Medical Evaluator that is eligible for rating under section 10159, the DEU must issue a summary rating determination pursuant to Labor Code section 4061(e) within 20 days of either the date the time has passed for the filing of a request for factual correction under Labor Code section 4061(d)(1), or the date of receipt of a supplemental report submitted to the DEU in response to a request for factual correction under section 37, whichever is later.

## Discussion:

*Although Labor Code §4061(e) solely applies to Summary Rating procedures when the employee is unrepresented, we believe that the addition of clarifying language to the regulatory section will avoid any confusion about its application, particularly since the Division has proposed to strike a corollary section, §10160.5, pertaining to Summary Rating Determinations for represented employees.*

**Recommendation:**

**§10159. Summary Rating Determinations for Comprehensive Medical Evaluation of Unrepresented Employees.**

(b) The insurance carrier, ~~or self-insured employer,~~ **or claims administrator acting on behalf of the insurance carrier or self-insured employer,** must provide the employee with an Employee's Disability Questionnaire DWC AD Form 100 (DEU) prior to the appointment scheduled with the Qualified Medical Evaluator. The employee will complete the questionnaire and provide it to the Qualified Medical Evaluator at the time of the examination.

(c) The insurance carrier, self-insured employer, **claims administrator acting on behalf of the insurance carrier or self-insured employer,** or injured worker must complete a Request for Summary Rating Determination of Qualified Medical Evaluator's Report DWC AD Form 101 (DEU), a copy of which must be served on the opposing party. The requesting party must send the request, including proof of service of the request on the opposing party, to the Qualified Medical Evaluator, together with all medical reports and medical records relating to the case, prior to the scheduled examination with the Qualified Medical Evaluator. The request must include the appropriate DEU address of the Disability Evaluation Unit. A listing of all of the offices of the DEU, with each office's area of jurisdiction, will be provided, upon request, by any DEU office or any Information and Assistance Office.

(d) When a summary rating determination has been requested, the Qualified Medical Evaluator must submit all of the following documents to the **Disability Evaluation Unit** DEU at the location indicated on the DWC AD Form 101 (DEU) and must concurrently serve copies on the employee and claims administrator:

**Discussion:**

*There are no definitions included at the outset of these regulations to provide clarification on the meaning of terms. It cannot be assumed that the claims administrator's role is interchangeable with the insurance carrier or self-insured employer. We have added language in (b) and (c) to clarify the claims administrator's role in compliance with these requirements.*

*We suggest deletion of the full reference to the Disability Evaluation Unit to be consistent with other proposed sections that the Division proposes to strike and replace with "DEU."*

**Recommendation:**

**§10164. Service of Summary Rating Determination and Notice of Options Following Permanent Disability Rating.**

~~Within the time specified in Labor Code section 4061(e),~~ **Within the time specified in Labor Code section 4061(e),** ~~t~~<sup>+</sup>the DEU will serve the permanent disability rating determination on the employee, ~~and the employer,~~ **or the claims administrator if acting on behalf of the employer** and the Notice of Options Following Permanent Disability Rating (DEU Form 110) on the employee by the method of service described in section ~~of~~ 10205.6.

## Discussion:

*The opening phrase in this section should be maintained. Labor Code section §4061(e) requires that within 20 days of receipt of the comprehensive evaluation, the permanent disability rating “shall” be calculated and served on the employee and employer. We believe this statutory section takes precedence, and that the timeframe to complete and serve the rating applies to the DEU as well. As this section pertains to unrepresented employees, we also believe there is a compelling reason for the regulatory section to be consistent with the statutory 20-day timeframe as it ensures accountability of everyone involved in the Summary Rating process and may serve to avoid unnecessary delays in the resolution of the employee’s claim.*

*There are no definitions included at the outset of these regulations to provide clarification on the meaning of terms. It cannot be assumed that the claims administrator’s role is interchangeable with the insurance carrier or self-insured employer. We have added language to clarify the claims administrator’s role in compliance with these requirements.*

*We have also added minor punctuation and syntax corrections.*

## Recommendation:

### **§10165. Reconsideration of Summary Rating Determinations if Employee is Unrepresented.**

(a) Requests for reconsideration of the summary rating determination ~~may~~**must** be filed with the administrative director. **If either the employee, employer, or claims administrator on behalf of the employer requests reconsideration, the request shall be filed** in writing within 30 days of receipt of the summary rating determination. DWC-AD Form 103 (DEU) can be used to file for reconsideration. The request and must clearly specify the reasons the summary rating determination should be reconsidered and must include a proof of service on the other party and any other information necessary to support the request. Reconsideration of a summary rating may be granted by the administrative director for one or more of the following reasons:

## Discussion:

*The request for reconsideration of a summary rating is not mandatory so we have replaced the word “must” with the word “may.”*

*There are no definitions included at the outset of these regulations to provide clarification on the meaning of terms. It cannot be assumed that the claims administrator’s role is interchangeable with the insurance carrier or self-insured employer. We have added language to clarify the claims administrator’s role in compliance with these requirements if a request for summary rating determination is made.*

## Recommendation:

### **§10167. Request for Consultative Rating. (DWC AD Form 104 (DEU)).**

DWC AD Form 104 (DEU)

**Discussion:**

*A technical correction is suggested.*

**Recommendation:****§10168. Notice of Options Following Disability Rating (DEU Form 110).****Discussion:**

*The Institute recognizes the challenges presented in attempting to describe complex legal documents in a limited space. We also understand that the Division's intention has always been to provide information to unrepresented injured employees that is understandable and helps to improve communication.*

*We suggest that clarity can be added with a slight reorganization to the section. For example, inserting a paragraph break before the last sentence of the opening paragraph would help draw attention to the two options available. Simple edits to the order of the bullet points outlining the Differences Between Stipulated Award and C&R would provide better focus on the differences being discussed (e.g., grouping the two items about protecting rights or risking litigation, grouping the two items about giving up or keeping medical care, and grouping the two items referencing biweekly or lump sum payments).*

Thank you for the opportunity to comment, and please contact us if additional information would be helpful.

Sincerely,

*Jackie Secia*

Jackie Secia  
Claims and Medical Director

JS:me

cc: George Parisotto, DWC Administrative Director  
Katrina Hagen, DIR Executive Director  
CWCI Claims Committee  
CWCI Medical Care Committee  
CWCI Legal Committee  
CWCI Regular Members  
CWCI Associate Members